

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIAM MIN PEDERSEN, a married man;  
DEAN JONES, a married man; JOHNNIE  
BRAGG, a married man,

Plaintiffs,

v.

TOI USA, INC., a Nevada corporation;  
ROBERT CHARLES BRAY aka ROBBIE  
BRAY, a single man; VANNESSA R. BRAY,  
a single woman,

Defendants.

Case No. C05-5618FDB

ORDER OF REMAND

Plaintiffs move to remand this cause of action to Pierce County Superior Court whence it was removed. Plaintiffs contend lack of diversity of citizenship of TOI, USA, a Nevada corporation conducting all of its affairs in the State of Washington (annual report listing its principal place of business in Seattle, Washington, and defendant's statement that he did more than \$3,000,000 worth of business in Washington during the last year. (Decl. of Robbie Bray filed October 17, 2005.) Per the Declaration of Min Pedersen, virtually all the revenue of the corporation was derived from Washington persons or entities.

Additionally, Plaintiffs assert that Defendant Vanessa Bray (Plaintiffs' accountant, who issued payroll checks) is a citizen of Colorado, and Plaintiff Dean Jones is also a citizen of Colorado. Plaintiff concludes that there is not, therefore, complete diversity, and this matter must be remanded to the Superior Court.

ORDER - 1


1 For diversity purposes, a “corporation shall be deemed a citizen of any State by which it has  
2 been incorporated and of the State where it has its principal place of business.” 28 U.S.C. §  
3 1332(c)(1). In determining a corporation’s principal place of business, there are several tests: the  
4 “nerve center test” where its executive and administrative functions are located. *Scot Typewriter Co.*  
5 *v. Underwood Corp.*, 170 F. Supp. 862 (S.D.N.Y. 1959). Other courts focus on the state where  
6 most of the corporation’s physical operations are located. *Kelly v. United States Steel Corp.*, 284  
7 F.2d 850, 854 (3rd Cir. 1960). Most courts now examine the entity’s “total activities” including  
8 where its operations are located, where it supervises that business, and where it employees persons  
9 and conducts its business. *Industrial Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1094 (9<sup>th</sup> Cir.  
10 1990).

11 Defendants assert that TOI USA is not a citizen of the State of Washington as it is  
12 incorporated in Nevada and it lists its principal place of business as Seattle, Washington in the annual  
13 report to the Washington Secretary of State. (Smith Decl., Ex. A.) Moreover, both Plaintiff Dean  
14 Jones and Defendant Vannessa R. Bray are Colorado citizens, and this is not disputed. The  
15 Complaint states that Plaintiffs are part-time Pierce County residents.

16 Plaintiffs have demonstrated that diversity jurisdiction does not exists in this case, and  
17 Defendants have not demonstrated otherwise.

18 ACCORDINGLY, IT IS ORDERED: Plaintiff’s Motion to Remand [Dkt. # 8] is GRANTED  
19 and this cause of action is REMANDED to Pierce County Superior Court.

20 DATED this 15<sup>th</sup> day of December, 2005.

21  
22   
23 FRANKLIN D. BURGESS  
24 UNITED STATES DISTRICT JUDGE  
25  
26